IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9311 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF RAMANBHAI NATHUBHAI- CHAMPAKBHAI RAMANBHAI

Versus

GUJARAT REVENUE TRIBUNAL

Appearance:

1. Special Civil Application No. 9311 of 1993
   NOTICE SERVED for Petitioner No. 1
   MR MANAV A MEHTA for Petitioner No. 1/B-2
   RULE SERVED BY DS for Respondent No. 1
   MS MAITHILI D. MEHTA WITH MR. HARSHADRAY A. MEHTA for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/12/2004

ORAL JUDGEMENT

1. In this petition preferred under Article 227 of the Constitution of India, the petitioner has challenged the revisional order of the Gujarat Revenue Tribunal dated 16th April 1993, at Annexure "E" to the petition, confirming the orders of the revenue authorities, at Annexures "D" and "C" to the petition, rejecting the application of the petitioners made under Section 32(1B) of the Bombay Tenancy & Agricultural Lands Act, 1948.

2. According to the petitioners, Laxmiben Vijbhukhandas and others were the owners of the agricultural lands bearing survey Nos. 21/1 and 23 of village Kapadra of Taluka Choryasi in the district of Surat. Nathubhai Lallubhai, father of the deceased original petitioner No.1 - Ramanbhai, and the petitioner No.2, was cultivating these lands since 1940 - 41. These lands were sold to Dayaram under registered sale deed dated 21-5-1949 by Laxmiben and others, the original owners. Thereafter, Dayaram's name was entered in the register by mutation entry No.161 made on 5-4-1955. According to the petitioners, Nathubhai, however, continued to cultivate the lands till 1955-56 and his name was shown in the village records as the tiller. He was, therefore, a "deemed tenant" within the meaning of Section 4 of the said Act. According to the petitioners, since he was a "deemed tenant", the possession of said lands could not have been taken away from Nathubhai by Dayaram, save and in accordance with the provisions of Section 29 of the Act. However, with a view to circumvent the said provisions and in contravention of Section 85 of the said Act, a civil suit being Regular Civil Suit No.565 of 1950 was filed by Dayaram in the Civil Court (J.D.) - Surat against Nathubhai for obtaining possession of the lands and for mesne-profits and it came to be decreed on 30th September 1967. The original lands were partitioned amongst the owners and mutations were accordingly made in respect of the survey numbers No.23 and 21/1.

3. Thereafter, the petitioners made an application for restoration of possession under Section 32(1B) of the Act. The Additional Mamlatdar & Agricultural Lands Tribunal dismissed that application on 22-4-1988, and the appeal against that order being Tenancy Appeal No.76 of 1988 was dismissed on 13th April 1989 by the Assistant Collector, Choryasi. The revision preferred against that order (TEN.B.S.280/89) before the Revenue Tribunal was dismissed on 16-4-1993.

4. It was contended on behalf of the petitioner that Nathubhai, father of the petitioners Nos. 1 and 2 was a

"deemed tenant" under Section 4 of the said Act and therefore, a tenant as defined by Section 2(18). He was cultivating the lands since 1948-49 till the possession came to be taken over pursuant to a decree passed by the Civil Court. The learned counsel contended that the Civil Court had no jurisdiction to pass any such decree in view of the provisions of Section 85 of the Act, by which the jurisdiction of the Civil Court was barred in the matters which were required to be decided by the competent authority under the Act. It was submitted that even the question whether Nathubhai was a tenant or not, was required to be decided only by the competent authority under the Act in view of the provisions of section 70 and could not have been decided by the Civil Court. Moreover, the possession could have been taken only by following procedure prescribed by Section 29 of the Act, which excluded any possibility of possession being obtained pursuant to a decree made by the Civil Court. The procedure prescribed by Section 29 of the Act for taking possession from a tenant was not followed. The Tribunal, therefore, ought to have ignored the decree of the Civil Court and restored the possession of the lands in question to the petitioners under Section 32(1B) of the Act.

4.1 In support of his contentions, the learned counsel for the petitioners placed reliance on decisions of this Court in Bhailalbhai Govindbhai v. Bai Nanduba, reported in 18 GLR 901 and Vasanji Kevalbhai v. Dahiben d/o Ranchhodji Jivanji, reported in 15 GLR 780. The decision in Bhailalbhai was rendered in the context of section 32(1B), and it was held by the Court that, on an analysis of Section 32(1B) (as amended by Act No.5 of 1973), it was evident that all that the tenant has to establish in order to secure possession of the land in question is that he was in possession on the appointed day; (2) that he was dispossessed on the specified date i.e. March 3, 1973, and that, (3) he was dispossessed before the specified date, otherwise than in the manner provided in Section 29 or any other provisions of the Tenancy Act. In Vasanji's case, a Division Bench of this Court observed in the context of the provisions of Section 29(2) of the Act that it was apparent from the language of that provision that there was a legislative decision putting an embargo even on obtaining possession, except under orders of the Mamlatdar. It was held that even in a pending suit, the civil court would not be able to pass any decree ignoring this mandate of the legislation which clearly settled the point of time at which the protective umbrella comes into operation.

5. The learned counsel appearing for the respondents Nos. 2, 3 and 4 argued that Nathubhai, who has claimed to have been deemed tenant was not in possession since 19-4-1955 when the possession was taken away under a decree of the Court. Therefore, on the appointed day i.e. 15-6-1955, he was not in possession and hence, the provisions of Section 32(1B) were inapplicable in this case. She also submitted that the application under Section 32(1B) was not made within the prescribed time and that the ALT had, therefore, rightly held that the application being in contravention of Rule 15A of the Rules made under the said Act, could not be entertained. She supported the reasoning of the Tribunal and the revenue authorities below it for rejecting the claim of the petitioners for restoration of the lands under Section 32(1B) of the Act.

6. There is concurrent finding of all the authorities that Nathubhai was not in possession of the lands on the appointed day i.e. 15-6-1955, since his possession was taken away on 19-4-1955, pursuant to a Court decree. The Tribunal has held that, while deciding an application under Section 32(1B) of the Act, it was required to be seen whether the ingredients of that provision were proved. The Tribunal found that the Mamlatdar & ALT had correctly decided that these ingredients were not proved. It is only if the possession was taken away after 15-6-1955 that the provisions of Section 32(1B) could have been attracted. Moreover, the landlord who had sold the lands to the respondents was not in possession on the specified date i.e. 3-3-1973 and the opponents cannot be considered as successor in interest of the landlord since they were successors in title. The Tribunal, therefore, rejected the revision application confirming the orders of the Assistant Collector and the Additional Mamlatdar.

7. The Additional Mamlatdar noted that, for attracting the provisions of Section 32(1B) of the Act, it was required to be seen whether the tenant was in possession as on 15-6-1955, and that, he was dispossessed prior to 3-3-1973 without an order made by the Mamlatdar. It was held that since the possession was taken away prior to 15-6-1955, the provisions of Section 32(1B) of the Act were not attracted. The Assistant Collector, in appeal, confirmed the finding that the Nathubhai was not in possession as on 15-6-1955 and therefore, the provisions of Section 32(1B) was not attracted. He also held that the application was required to be made within one year under Rule 15A of the Rules framed under the Act when it was made after 34 years.

8. It is evident from the record that Nathubhai was not in possession on 15-6-1955. His possession was taken away on 19-4-1955. Therefore, one of the important ingredients of Section 32(1B) was not satisfied. However, apart from that aspect, the crucial aspect is that the application under Section 32(1B) of the Act was required to be made "within a period of one year from the coming into force of the Bombay Tenancy & agricultural Lands (Gujarat Amendment) Act, 1972", as provided by Rule 15A of the Bombay Tenancy & Agricultural Lands Rules, 1956, which was inserted by Notification No.7 dated 9-8-1973. The application under Section 32(1B) was made on 16-1-1987, while the said Amendment Act of 1972 came into force from 3-3-1973, which is the specified date. Therefore, the application under Section 32(1B) made on 16-1-1987 was clearly time-barred and could never have been entertained in view of the provisions of Rule 15A of the said Rules, as rightly held by the learned Assistant Collector, which order came to be confirmed by the Tribunal. In this view of the matter, the ratio of the decisions in Vasanji (supra) and Bhailalbhai (supra) cannot assist the petitioners.

9. There is, thus, no error apparent on the record of the proceedings committed by any of these authorities and the impugned order of the Tribunal has been validly made in exercise of its jurisdiction on the basis of the material on record warranting no interference by this Court under Article 227 of the Constitution of India. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

[R.K.ABICHANDANI, J.]

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